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 USA Capital First Trust Deed Fund, LLC*

**UNITED STATES BANKRUPTCY COURT
 DISTRICT OF NEVADA**

In re:) BK-S-06-10725-LBR
 USA COMMERCIAL MORTGAGE COMPANY) Chapter 11
 Debtor.)

In re:) BK-S-06-10726-LBR
 USA CAPITAL REALTY ADVISORS, LLC,) Chapter 11
 Debtor.)

In re:) BK-S-06-10727-LBR
 USA CAPITAL DIVERSIFIED TRUST DEED FUND, LLC,) Chapter 11
 Debtor.)

In re:) BK-S-06-10728-LBR
 USA CAPITAL FIRST TRUST DEED FUND, LLC,) Chapter 11
 Debtor.)

In re:) BK-S-06-10729-LBR
 USA SECURITIES, LLC,) Chapter 11
 Debtor.)

Affects)
☐ All Debtors)
☒ USA Commercial Mortgage Co.)
☐ USA Securities, LLC)
☐ USA Capital Realty Advisors, LLC)
☐ USA Capital Diversified Trust Deed) Date: September 28, 2007
☒ USA First Trust Deed Fund, LLC) Time: 1:30 a.m.

**USA CAPITAL FIRST TRUST DEED FUND, LLC'S PROPOSED ALLOWANCE OF
 INFORMAL PROOF OF CLAIM AND OBJECTION TO DUPLICATE CLAIM**

1 The Labossiere Family Trust Dated 3/20/1987, Gerard and Lucille Labossiere Trustees
 2 ("Claimant") filed Proof of Claim Nos. 10725-00219 (the "Original Claim") and 10725-02464
 3 (the "Duplicate Claim") against USA Commercial Mortgage Company ("USACM"), each
 4 claiming the amount of \$1,500. The basis for the Original Claim appears to be related to a
 5 former investment by Claimant in USA Capital First Trust Deed Fund, LLC (the "FTDF").

6 The Original Claim and Duplicate Claim (the "Claims") were filed in the USACM
 7 case. However, the attachment to the Claims is an FTDF investment statement. Although it is
 8 unclear at this stage against which of the debtors in these jointly-administered bankruptcy
 9 proceedings the Original Claim should have been filed, due to the de minimis amount of the
 10 Original Claim, the FTDF's motion to close its case being currently set for September 28,
 11 2007 and its intent to make a final distribution shortly thereafter, and the FTDF's desire to
 12 minimize the costs to the estate, the FTDF has resolved not to object to allowance of the
 13 Original Claim as an informal proof of claim against the FTDF estate.

14 However, the FTDF does object to any proposed allowance of the Duplicate Claim
 15 against the FTDF estate. The Duplicate Claim, as its name suggests, is identical to the
 16 Original Claim, arising from the same transaction and former investment in the FTDF.
 17 Section 502(b)(1) of the Bankruptcy Code provides that the Court shall not allow a claim that
 18 "is unenforceable against the debtor and property of the debtor, under any agreement or
 19 applicable law for a reason other than because such claim is contingent or unmatured." 11
 20 U.S.C. § 502(b)(1). Section 502 therefore precludes the allowance of duplicative proofs of
 21 claim because applicable law plainly prevents a claimant from recovering twice on a single
 22 debt. See Fine Organics Corp. v. Hexcel Corp. (In re Hexcel Corp.), 174 B.R. 807, 811
 23 (Bankr. N.D. Cal. 1994) (noting the bankruptcy policy "intended to protect the limited assets
 24 of the estate from duplicative claims"); In re Finley, Kumble, Wagner, Heine, Underberg,
 25 Manley, Myerson & Casey, 160 B.R. 882, 894 (Bankr. S.D.N.Y. 1993) ("to allow one creditor
 26 to assert two dollars in claims for every one dollar of loss from the same debtor violates
 27

1 principles of ratable distribution and offends notions of uniform treatment for creditors")
2 (quotations omitted). Accordingly, the FTDF seeks the entry of an order that would deny any
3 proposed allowance of the Duplicate Claim against the FTDF estate.

4 This objection is made pursuant to Bankruptcy Code section 502, Federal Rule of
5 Bankruptcy Procedure 3007, and Local Rule of Bankruptcy Practice 3007.

6 Dated: August 28, 2007.

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